

REMARKS

INTERVIEW SUMMARY

The examiner proposed amendments in view of alleged prior art not applied on the record. In order to fully consider the need for amendments in view of the alleged prior art, Applicants requested a written Office Action.

THE REJECTION OF CLAIMS 1-10 AND 18-37 UNDER 37 CFR U.S.C. §112, FIRST PARAGRAPH

Claims 1-10 and 18-37 are rejected as not enabled because they were construed as reading on a single variable region. The Patent Office asserted that a single variable region could not bind specifically to an antigen.

The Patent Office's construction of the claim is untenable and contrary to other recitations of the claim. The claim explicitly recites that the molecule "specifically binds to an extracellular domain of TEM17." Thus a construction to the contrary is unsustainable.

Nonetheless, to advance prosecution, Applicants have amended independent claim 1 to recite specific types of molecules which are capable of specific binding to antigens. These include intact antibodies, ScFv, monoclonal antibodies, Fab, Fab', and Fab'2. The amendment directly addresses and overcomes the rejection.

THE REJECTION OF CLAIMS 33-37 UNDER 35 U.S.C. §112, FIRST PARAGRAPH

The recitation of amino acids 18-427 was objected to as not precisely matching the specification's designation of residues 19-426 as the extracellular domain. The claims have been amended to address this discrepancy.

THE REJECTION OF CLAIMS 1-10 AND 18-37 UNDER 35 U.S.C. §102(e)

Claims 1-10 and 18-37 are rejected as anticipated by Drmanac, U.S. Patent No. 6,667,391 ('391) in view of Harlow. This rejection is respectfully traversed.

The '391 patent teaches a protein of SEQ ID NO:23 and teaches that antibodies could be made which specifically bind to it. SEQ ID NO: 23 is cited by the USPTO as sharing 42.7 % overall sequence identity with SEQ ID NO: 230 (TEM17) of the present invention. The '391 antibodies are apparently prophetic, as no particular antibodies of any particular type with any particular properties are disclosed as having been made or obtained.

The '391 patent, however, describes its antibody as "specifically recognizing" or "specific for" a polypeptide of its invention. See column 67, lines 1-23. Moreover, the '391 patent teaches that its antibodies have variable regions which "bind polypeptides of the invention exclusively." In addition, the '391 patent's antibodies are "able to distinguish the polypeptide of the invention from other similar polypeptides of the invention exclusively (*i.e.*, able to distinguish the polypeptide of the invention from other similar polypeptides despite sequence identity, homology, or similarity found in the family of polypeptides."

Thus, by the explicit teachings of the '391 patent, it *cannot* anticipate the recited antibodies of the present invention. The antibodies of the present invention specifically bind to TEM 17, whereas the '391 antibodies bind exclusively to SEQ ID NO: 23. Since these two proteins are not closely related, and certainly are not identical, the antibodies cannot be the same.

Withdrawal of the rejection is respectfully requested and allowance of all claims is in order.

Respectfully submitted,

Dated: 13 September 2006

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